

REMARKS

This Preliminary Amendment is filed in connection with a Request for Continued Examination and a 1-month extension of time, and is in response to the Final Office Action of Jan. 11, 2006 and the Advisory Action mailed April 7, 2006. Please **do not** enter the Amendment after Final Rejection filed by the Applicant on March 13, 2006. All objections and rejections are respectfully traversed.

Claims 30-54 and 60-72 are now pending in the case.

Claims 30, 37, 38, 45 and 50 have been amended to better claim the invention.

Claims 60-72 have been added.

Allowed Subject Matter

At paragraphs 6-7 of the Final Office Action, claims 30-44 were allowed. The Applicant has minorly amended some of these claims to remove ambiguity relating to verb forms. Such amendments do not substantially alter the scope of the claims, and accordingly the Applicant respectfully requests the Examiner maintain allowance of these claims.

Request for Interview

To expedite the prosecution of this case, the Applicant respectfully requests a telephonic interview with the Examiner, if this Amendment does not place the case in condition for allowance. The Applicant hopes any remaining issue may be address via an Interview and possibly an Examiner Amendment. The Examiner is encouraged to call the undersigned attorney at (617) 951-2500 at a time convenient to the Examiner.

Claim Rejections – 35 U.S.C. §101

At paragraph 2 of the Final Office Action, claims 45-49 were rejected under 35 U.S.C. §101 as not directed to “a true apparatus”.

The Applicant respectfully urges that claims 45-49 (now amended) are proper claims that meet the requirements of 35 U.S.C §101 and all other applicable statutes and rules. Specifically, 35 U.S.C. §101 requires:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.

The section is often interpreted in light of 35 U.S.C. 112, which provides at paragraph 6 (emphasis added):

An element in a claim for a combination *may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.*

Further MPEP §2181 (III) states in relevant part:

If the corresponding structure, material, or acts are described in the specification in specific terms... and one skilled in the art could identify the structure, material or acts from that description, then the requirements of 35 U.S.C. §112, second and sixth paragraphs are satisfied. See *Amtel*, 198 F.3d at 1382, 53 USPQ2d 1231.

In light of this, the Applicant respectfully urges the claims are proper, as one skilled in the art can readily identify the structures in the specification corresponding to the claimed “means.” The Applicant describes several structures in the specification, namely at pages 5-7 and in Fig. 2, that perform various ones of the claimed function.

Further, the corresponding structures for the claims are not merely software as the Examiner suggests. Instead such corresponding structures are a mixture of hardware and software, where the software is contained in, and operates upon, tangible hardware com-

ponents. Accordingly, as the software is embodied in a tangible medium, the Applicant believes the claims meet the requirements of 35 U.S.C §101.

At paragraph 3 of the Final Office Action, claims 55-59 were rejected under 35 U.S.C. §101 as directed to non-statutory subject matter. The Applicant has cancelled, without prejudice, claims 55-59 and thus believes this rejection is moot.

Claim Rejections – 35 U.S.C. §112

At paragraph 5 of the Final Office Action, claims 50-54 were rejected under 35 U.S.C. §112 as indefinite for failing to point out and distinctly claim the subject matter of the invention. Specifically, the Examiner states it is unclear what is meant by “Y.” The Applicant has amended claim 50 to include “X represents a number of classes of service and Y represents a particular number.” Accordingly, such claims are now believed to be allowable.

All independent claims are believed to be in condition for allowance.

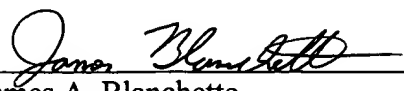
All dependent claims are believed to be dependent from allowable independent claims.

The Applicant respectfully solicits favorable action.

Please charge any additional fee occasioned by this paper to our Deposit Account No. 03-1237.

PATENTS
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Seq. #3297 CPOL# 157290

Respectfully submitted,


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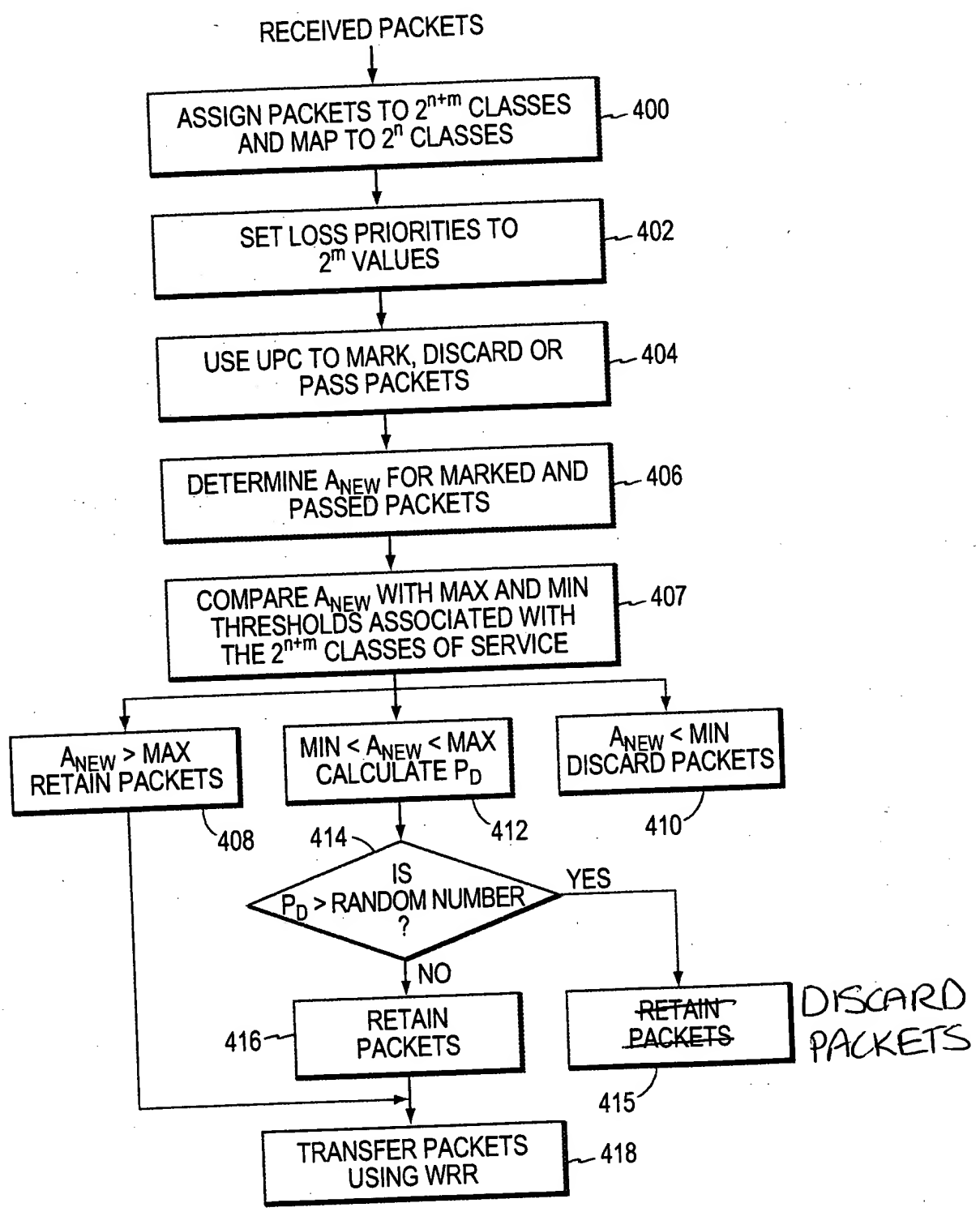


FIG. 4